



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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U.S. DEPT. OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

I have your letter of December 3, 1947, requesting to be advised whether this Office will object to the Bureau of Federal Supply accepting custody of approximately 83 acres of Government-owned land presently under the control of the War Assets Administration as surplus property upon payment of the fair value of said land to the War Assets Administration.

The circumstances giving rise to the question presented are set forth in your letter, in pertinent part, as follows:

"Pursuant to the provisions of the Strategic and Critical Materials Stock Piling Act, Public Law 520, 79th Congress, Second Session, 60 Stat. 596, the Bureau of Federal Supply has accepted for the National Stock Pile approximately 72,000 long tons of material consisting mainly of manganese concentrates and manganese ore formerly owned by the Reconstruction Finance Corporation which was declared surplus to the needs of that Corporation. This material is now stored on a plot of land in Deming, New Mexico, consisting of approximately 83 acres, title to which is in the United States and the custody to which was previously with the Reconstruction Finance Corporation. Upon the transfer of custody of the material, the land upon which it was stored became surplus to the needs of the Reconstruction Finance Corporation and that land was accordingly declared to the War Assets Administration for appropriate disposition.

"Upon notification to the Administration that it was the desire of the Bureau to continue to store the material on the premises in question, that Administration, pursuant to the provisions of Section 12(b) of the Surplus Property Act of 1944, as amended, 58 Stat. 770

(U.S.C. Supp.V, Title 50, app. sec. 1621(b)), has offered to transfer custody of the land to the Bureau upon payment of the represented fair value therefor of \$10,894.36, representing acquisition cost of \$7,946.13 plus betterments amounting to \$2,948.23. So far as this Department has been able to determine, the only statute which has any bearing on the transaction is Revised Statutes Section 3736 (U.S.C. Title 41, Sec. 14) which provides as follows:

"The land shall be purchased on account of the United States, except under a law authorizing such purchase."

"An examination of the acts making appropriations to carry out the purposes of the Strategic and Critical Materials Stock Piling Act (First Supplemental Appropriation Act, 1947, Public Law 663, 79th Congress, Second Session, 60 Stat. 916, and The Supplemental Appropriation Act, 1948, Public Law 271, 80th Congress, 61 Stat. 624) does not reveal any specific language authorizing the purchase of land, nor does the Strategic and Critical Materials Stock Piling Act contain such authorization. However, it is the position of this Department that Revised Statutes Section 3736 is not applicable to the transaction for the reason that the acquisition by the Bureau of Federal Supply does not represent a purchase of land on account of the United States, since title thereto had already been acquired by the Reconstruction Finance Corporation, presumably under an act authorizing such acquisition. Section 3(b) of the Strategic and Critical Materials Stock Piling Act authorizes the Secretary of the Treasury, through the medium of the Bureau of Federal Supply and at the direction of the Secretary of the Army and the Secretary of the Navy, to provide for the storage of strategic and critical materials for stock piling purposes on other locations approved by the Secretaries of the Army and Navy. It is the opinion of this Department that the acquisition of this land from War Assets Administration is merely a method of providing for the storage of stock pile materials."

Section 12 of the Surplus Property Act of 1944, as amended, referred to in your letter, provides as follows:

"(a). It shall be the duty of the Administrator to facilitate the transfer of surplus property from one Government agency to other Government agencies for their own use and not for transfer or disposition; and the transfer of surplus property under this section shall be given priority over all other disposals provided for in this Act, except disposals to veterans of property reserved exclusively for veterans under subsection (b) of section 16 of this Act. The Administrator shall prescribe a reasonable time within which Government agencies shall exercise the priority provided by this

subsection, but the time so fixed shall not exceed twenty days from the time public notice is given of the availability of the surplus property for disposal to Government agencies.

"(b). It shall be the responsibility of all Government agencies, in order to avoid making purchases through commercial channels, continuously to consult the records of surplus property established by the Administrator and to determine whether their requirements can be satisfied out of such surplus property. It shall also be the responsibility of the head of each Government agency to submit to the Administrator such estimates of the needs of the agency and such reports in relation thereto as the Administrator may deem necessary to promote the fullest utilization of surplus property. It shall be the responsibility of the Administrator to determine whether Government agencies are acquiring surplus property to the fullest possible extent, and to notify agencies whenever, in his judgment, they are not so doing.

"(c). The disposal agency responsible for any such property shall transfer it to the Government agency acquiring it at the fair value of the property as fixed by the disposal agency, under regulations prescribed by the Administrator, unless transfer without reimbursement or transfer of funds is authorized under subsection (d) of this section.

"(d). Notwithstanding the provisions of section 34(a) of this Act, no Government agency may transfer any property to any other Government agency without reimbursement or transfer of funds under authority of any law approved prior to June 22, 1944. Any disposal agency may transfer surplus property to a Government agency without reimbursement or transfer of funds whenever a transfer on such terms by the owning agency (by which such property was declared surplus) would be authorized by any law approved subsequent to June 21, 1944, to be made to the Government agency desiring such property."

Section 31(b) of the act contains the following provision:

"(b) Any Government agency is authorized to use for the acquisition of any surplus property under this Act any funds heretofore or hereafter appropriated, allocated, or available to it for the acquisition of property of the same kind."

While realty is not expressly mentioned in said section 12, under the terms of section 3 of the act the word "property" as used therein is defined as meaning "any interest, owned by the United

States or any Government agency, in real or personal property," and the term "surplus property" as used therein is defined as meaning "any property which has been determined to be surplus to the needs and responsibilities of the owning agency." It is apparent, therefore, that when read in conjunction with section 3 of the said act the terms of section 12 thereof properly should be construed as covering the disposition of real property as well as personal property. Any doubt that such is the case would appear to be entirely removed by section 23 of the act which provides for disposal through other channels of "Surplus real property which is not disposed of to Government agencies under section 12."

As stated in your letter, no express authority for the acquisition of land to carry out the purposes of the Strategic and Critical Materials Stock Piling Act is contained in the said act or in the First Supplemental Appropriation Act, 1947, 60 Stat. 910, 916, making the appropriations for carrying out these purposes. However, since as above indicated the inter-agency transfer here proposed clearly appears to be authorized under the Surplus Property Act of 1944, provided funds properly may be said to be available therefor, it seems reasonable to conclude that the restriction placed upon the purchase of land on behalf of the United States by section 3736, Revised Statutes, has no proper application to such transfer. See 40 Op. Atty. Gen. No. ⁴⁸³114, September 6, 1946.

In view of the foregoing, if it be administratively determined

that the transfer of the land here in question is "necessary for the * * * storage * * * of strategic and critical materials for national defense purposes," as provided by the First Supplemental Appropriation Act, 1947, supra, it would appear that the cost thereof reasonably may be regarded as a proper charge against the appropriation established by the said act.

Respectfully,

(Signed) Lindsay C. Warner
Comptroller General
of the United States

[Handwritten signature and date 11/16/47]

[Handwritten date 11/16/47]